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Governor

Jeanne M. Lambrew, Ph.D.  
Commissioner




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April 20, 2022

## MEMORANDUM

**TO:** Joseph M. Pickering, Esq., Chief Administrative Hearing Officer

**FROM:** Jeanne M. Lambrew, Ph.D., Commissioner 

**SUBJECT:** Limited Delegation of Authority regarding Orders of Reference AMENDED

### Background

Section VI(B)(5) of the Administrative Hearing Regulation provides that certain types of administrative hearings may be finally decided by the Commissioner pursuant to an Order of Reference. Such hearings are heard by an Administrative Hearing Officer who prepares written findings and a recommended decision that is then forwarded to the Commissioner for final approval. The Commissioner is authorized by Section VI(B)(5)(c), however, to delegate any of her Order of Reference authority to the Chief Administrative Hearing Officer. This memo amends and supersedes the memo dated November 16, 2015, which delegated certain limited authority regarding Orders of Reference to the Chief Administrative Hearing Officer, to provide that hearings regarding Mixed Case Reviews shall no longer be decided by the Commissioner pursuant to an Order of Reference.

As set forth below, certain limited authority regarding Orders of Reference is hereby delegated to the Chief Administrative Hearing Officer:

### Limited Delegation of Authority

Except as indicated below, all administrative hearings shall be finally decided by an Administrative Hearing Officer (as assigned by the Chief Hearing Officer) unless a request, pursuant to Section VI(B)(5)(a) of the Administrative Hearing Regulation, is made to the Chief Hearing Officer to have the hearing finally decided by the Commissioner pursuant to an Order of Reference. If such a request is made then the Chief Administrative Hearing Officer, upon consultation with the Commissioner (or her designee), shall decide whether to grant or deny the request. This decision shall take into consideration the complexity of the matter, whether there is a substantial public interest in the matter, whether the matter is novel or unusual, and any other consideration deemed relevant by the Chief Hearing Officer. If the request is granted then, in accordance with Section VI(B)(5)(b)(1), the Chief Hearing Officer shall assign a Hearing Officer to hold a hearing and prepare written findings and a recommended decision for final approval by the Commissioner. If the request is denied then, in accordance with Section VI(B)(5)(b)(2), the Chief Hearing Officer shall assign a Hearing Officer to hold a hearing and make a final decision. The Chief Hearing Officer's decision regarding whether to grant or deny a request for an Order of Reference is interlocutory and not subject to appeal.

The following types of administrative hearings, without need of a request, shall be finally decided by the Commissioner pursuant to an Order of Reference:

- Audit (including Program Integrity), except for Mixed Case Reviews
- CNA Registry Annotations
- Licensing (Child Care, Foster Home, Assisted Housing, Mental Health, Hospital or Nursing Home)
- Sentinel Events
- Mental Health or Disability Grievances
- Prior Authorization for Nursing Facility Care
- Prior Authorization for Private Duty Nursing Services for children
- Substantiation of Abuse or Neglect (Adult or Child)

This memo shall be effective on April 20, 2022, and shall apply to administrative hearings requested on or after that date.

JML/klv

cc: Benjamin Mann, Deputy Commissioner Finance  
Bethany Hamm, Deputy Commissioner  
Sara Gagné-Holmes, Deputy Commissioner  
Nirav Shah, Director, Maine CDC  
Todd Landry, Director, OCFS  
Sarah Squirrell, Acting Director, OBH  
Anthony Pelotte, Director, OFI  
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Paul Saucier, Director, OADS  
Michelle Probert, Director, OMS  
William Montejo, Director, DLC  
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Kevin Wells, General Counsel

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